STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2001-865

December 10, 2002

PUBLIC UTILITIES COMMISSION
Re: Rulemaking to Amend
Chapter 204, Basic Service Calling Areas

ORDER ADOPTING AMENDED RULE; STATEMENT OF FACTUAL AND POLICY BASIS

WELCH, Chairman; NUGENT, and DIAMOND Commissioners

I. SUMMARY

In this Order, we adopt revisions to Chapter 204 (65-407 CMR 204), Basic-Service Calling Area. This rule establishes the criteria and the procedures that the Commission, local exchange carriers and others who provide basic (local exchange) telephone service in Maine will follow to establish and change Basic Service Calling Areas (BSCAs).

The most significant change we have made to the rule is to require the addition of all contiguous exchanges, not already included, to each exchange's BSCA. Generally, these exchanges will be added to the Premium option. Other changes 1) eliminate the requirement that local exchange carriers (LECs) perform automatic periodic calling-volume analyses, 2) specify that the BSCA rule applies only to eligible telecommunications carriers (ETCs), 3) simplify the process (formerly a "waiver" process) for requesting changes in a BSCA, 4) add standards governing the consideration of such requests, and 5) reformat the rule to be more consistent with other PUC rules. These and other revisions are described below.

II. BACKGROUND

By Notice of Rulemaking (NOR) dated January 18, 2002, we initiated a rulemaking to revise Chapter 204. Because of comments received and information gathered at a Technical Conference held April 24, 2002, we issued a Further Notice of Rulemaking (FNOR) on July 16, 2002.[1] We received written comments from the Office of Public Advocate, Verizon-Maine, the Telephone Association of Maine (TAM), and a number of individuals. A public hearing was held March 5, 2002.

[1] By Notice of Inquiry dated September 12, 2000, we opened an inquiry to examine whether to revise or replace Chapter 204. The Notice of Rulemaking closed the inquiry on January 18, 2002.

The original Chapter 204 required all local exchange carriers (LECs) in Maine to analyze residential toll traffic data in each exchange every five years to determine which exchanges, if any, meet the Rule's threshold requirements for expansion of local calling areas. Under the Rule, an exchange would automatically be added to another exchange's calling area if 50% of the exchange's residential customers make four or more calls to the target exchange during a test month. The Rule also contained waiver provisions. LECs were allowed to request waivers from the Rule's automatic BSCA expansion requirements. Customers were allowed to request waivers from the Rule's minimum calling requirements. Those requests can and have resulted in the expansion of BSCAs that do not meet the Rule's threshold requirements.

In the Notice of Rulemaking we had proposed a third BSCA option, "Premium Plus," that would include all exchanges contiguous to the home exchange, service centers, and skipped-over exchanges. Commenters indicated that pricing for "Premium Plus" would cause problems. According to the comments, very few customers make any significant number of calls to all of the additional exchanges that would be included in the Premium Plus option, but those customers make a large number of calls, resulting in a high revenue loss per customer. For these reasons, the rate to recover all of the revenue loss from the small number of customers who would be likely to subscribe to the option would need to be extremely high, at least if all of the revenue loss were to be placed on the customers subscribing to the Premium Plus option.

As discussed in detail below, we require the addition of contiguous exchanges to the existing Premium Option. We have chosen to do so based largely on our concerns about price impact. First, we have limited the expansion to contiguous exchanges only. It is likely that the demand for calling to contiguous exchanges is more broad-based than the demand for calling service centers and skipped-over exchanges. Second, we have added contiguous exchanges to an existing option with a large number of existing subscribers. By spreading the cost impact over a greater number of customers, we believe we can achieve better balance between equity and affordability. We recognize that some customers who presently subscribe to the premium option may have little need to call any of the newly-added contiguous exchanges. Adding contiguous exchanges to the premium option is a compromise between adding them only to an option (Premium Plus) that might carry a rate that is too high[2] and adding them to the

[2] A related problem with the Premium Plus approach is that it would require a somewhat arbitrary decision as to which exchanges (or types of exchanges) become the "plus" exchanges. If one assumes that premium customers may differ as to which of the premium exchanges are important to them, many of those customers may be paying for the ability to make a toll-free call to one or more exchanges that they call infrequently, if at all, but they should be comforted by the fact that others taking the premium option are in the same position. Arbitrarily removing an exchange from the premium option and placing it in a higher-priced Premium Plus option would not seem fair to those customers for whom that exchange constitutes a priority calling area. Other than having calling options designed to accommodate all potential combinations of

economy option, thereby requiring all customers to pay. We discuss the choice between adding contiguous exchanges to the premium and economy options in greater detail below.

III. DISCUSSION OF COMMENTS

A. Is Any Change Required?

Some Commenters, including the Office of the Public Advocate (OPA), expressed concern about the pricing of the options and the potential effect on those who make few toll calls or have little desire to call the expanded areas. One of the OPA's suggestions was to make no statewide expansions and instead treat all requests for increased BSCA on a case-by-case basis. We have concluded, however, that it would be confusing and impractical to assess a large number of such requests without reasonably objective and clear standards. It would also be difficult to process such requests in a timely and consistent manner.

Verizon suggested that we allow competitive pressures and market forces to set "prices, terms, scope and other characteristics of telephone service…The Commission should not dictate to carriers nor decide for consumers what their local calling options will be." Since Verizon still has 98% of the local residential market in its territory, we are unwilling to rely on the mere prospect of consumer choice to provide the BSCA relief that customers in many areas seek. The OPA and TAM also support the status quo.

We decline to preserve the status quo because we think the number and variety of complaints received in the last 2-3 years support the conclusion that at least a limited systematic change is in the public interest. Adding contiguous exchanges will address most of the complaints and will avoid the uncertainty and confusion that would be created by addressing numerous separate complaints or claims of need throughout the State. In addition, adding contiguous exchanges will have a relatively small impact on rates.

B. Should Contiguous Exchanges Be Added to Economy or Premium?

Assuming that contiguous exchanges would be added, the commenters differed on whether they should be added on a flat-rated basis to the current premium or economy option. Verizon favors including additional contiguous exchanges (other than those presently part of an economy option) in the premium option. TAM favors including contiguous exchanges in the economy option. Adding contiguous exchanges to the economy option spreads the toll revenue loss among more customers, thereby making the increase to the economy rate less than the increase to the premium rate would be if the additions were added to the premium option. However, it also results in

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exchanges, something that is not currently feasible, there is a need to group exchanges in as fair a manner as is possible.

many customers receiving (and paying for) additional flat-rate calling that they would not take if given the choice. We assume that most economy customers choose the economy option to minimize costs and/or because they make few or no calls. It also appears, based on Verizon's preliminary but comprehensive traffic and revenue study, that adding contiguous exchanges to the premium calling area would result in a modest increase in the premium rate (45 cents a month), at least when combined with a small increase to the economy rate (25 cents a month).[3]

We note, however, that many Verizon customers will also see an increase beyond the amounts mentioned above because their "rate group" will change. Verizon's "rate groups" reflect the number of lines that a customer may call in the BSCA. Thus, as contiguous exchanges are added, the number of lines will increase for most customers and many exchanges will move to a larger rate group. The maximum total increase for any Verizon residential premium customer due to the combined effect of both the BSCA increase and rate group change is $2.07. Rate increases for other Verizon residential premium customers whose rate groups would change would be between $0.82 and $1.66. The maximum total increase for any Verizon residential economy customer due to the combined effect of both the BSCA increase and rate group change is $1.87. Rate increases for other residential economy customers whose rate groups would change would be between $0.56 and $1.46. Approximately two-thirds of Verizon customers would not change rate groups, so that the only rate change for them would be the estimated increase of 25 or 45 cents per month.[4]

We recognize that the required increases to premium rates for at least some of the independent telephone companies may need to be greater than those indicated by the Verizon study. We have included two provisions in the rule to address concerns about the possibility of premium rates that are too high. See discussions of Section 3(A) and 5 (A) below.

On balance, as a general rule, we believe customers who opt for the economy option should not be required to pay a substantial additional amount in local rates for the ability call additional exchanges to satisfy the demands of those customers

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[3] Because the study is preliminary, the rate increases finally proposed by Verizon may differ.

[4] If we were to approve a proposal by Verizon to eliminate rate groups, as discussed in Part III.D below, economy and premium rates would be the same throughout the state. Any elimination of rate groups would be implemented on a revenue-neutral basis, with the effect that the rates for customers in smaller rate groups would increase and rates for customers in larger rate groups would decrease. That effect would be in addition to increases (estimated at 25 and 45 cents) for the BSCA expansion. Thus, customers in smaller rate groups would see a larger net increase than those in larger rate groups because the decrease due to rate group elimination would offset some or all of the BSCA increase. Customers in the largest rate group might see a small net decrease. See further discussion at Part III.D below.

who want a larger calling area. Nevertheless, we believe that some increase to economy rates is warranted because those customers will benefit from the larger BSCA: they can make their relatively few calls to the non-flat-rated portions of the BSCA at a reduced rate of 5 cents a minute and can be called on a local basis from customers in the expanded BSCA.

C. Should Service Centers, "Skipped Over," And SAD Exchanges Be Added?

We decide not to include service centers (which were included in the proposed rule in both the NOR and the FNOR), skipped over exchanges (which were included in the proposed rule in the NOR, but not in the FNOR) or exchanges that provide service to customers in the same school district ("SAD exchanges") (about which we requested comments in the NOR, but proposed to exclude in the FNOR) . They instead may be considered when reviewing Section 6 requests: all three categories are included as "standards" to be considered in a Section 6 request. TAM and Verizon agree that skipped over exchanges, service centers, and SAD exchanges should not be included in this rule amendment. They cited the resulting size of BSCAs and likely high revenue losses and costs, and the difficulty in determining which one of several possible service center exchanges should be added. In a rule having statewide applicability, a requirement that every exchange must have local calling to at least one service center is somewhat inflexible. Exchanges without any present service center in their BSCA often do not have one because they have a split community of interest. In these cases, the interest in all the service centers frequently is weak (as demonstrated by calling volumes), and the service centers are distant and small. Much of Maine is very rural. We believe that if a service center has not been added to a BSCA under existing and prior processes, the reason is likely to be an insufficient community of interest. As noted above, whether a requested exchange is a service center is one of the criteria we will consider in the Section 6 request process.

D. Should The Rule Eliminate Rate Groups?

Verizon also suggested that collapsing its six rate group classifications into one average statewide rate would eliminate what it claims is an archaic pricing method that was intended to promote universal service. The effect of rate groups is that urban areas of the state, where per-line costs are lower, have higher local rates than rural, high-cost areas, where per-line costs are higher.[5] Historically, rate groups (which are based on the number of lines a customer may call toll-free) have been justified on "value of service" grounds, but the fact that this Chapter will add all contiguous exchanges to each exchange's BSCA diminishes the historic disparity in the relative "value" of calling areas. Verizon has proposed to eliminate rate groups at the same time as the rate changes necessary for the expansion of BSCAs are implemented on

[5] With or without rate groups, as long as all local rates are approximately equal, there is, and will remain, a substantial subsidy from customers in urban, low-cost areas to those in rural, high-cost areas.

the ground that a single rate change is less likely to result in customer confusion than multiple rate changes. Verizon stated that having a single rate group would be more easily understood and easier to administer, especially in conjunction with the change in calling areas.

The current difference in residential rates between Verizon's Rate Group A (lowest rate; smallest calling areas) and Rate Group F (highest rate; largest calling areas) is $2.90 per month. Implementing a single Verizon-wide rate on a revenue-neutral basis necessarily means that the rates for customers in the smaller rate groups would increase and rates for customers in the largest rate group would decrease. Verizon's study shows that approximately 75% of its residential customers would experience monthly rate increases ranging from about 9 cents (Rate Group E) to $2.14 (Rate Group A); the rate for Rate Group F (25% of residential customers) would decrease by 76 cents.[6] The rate effects stated above do not include the increase in the Premium rate (which Verizon believes will be 45 cents) for adding contiguous exchanges to BSCAs.

In the FNOR, we indicated that the elimination of rate groups was outside the scope of this rulemaking, but we asked for comments on Verizon's proposal. The OPA opposes the elimination of rate groups. The OPA argues that the change adds complexity to the new choices and consumers will have a more difficult time making the "right economic choice." TAM is also against the rate group change, stating that rate design should be dealt with in a separate case and that there are implications for TAM members for funding by the Maine Universal Service Fund because Chapter 288 (which governs that Fund) requires that the local rates of USF recipients must match Verizon's.[7]

We decline to eliminate rate groups in this rule. Rate groups are not required by the present rule (although their existence is recognized); they exist solely because they are included in Verizon's Terms and Conditions. The rulemaking did not contain a proposal concerning rate groups. The issue is therefore not within the scope of this rulemaking.

Verizon is, of course, free to propose changes to its Terms and Conditions at any time. We agree, if such a change is appropriate, it may make sense to coordinate its timing with the implementation of the BSCA changes required by this Rule. We therefore encourage Verizon to propose a change to its Terms and Conditions that would eliminate rate groups with a proposed effective date that would coincide with BSCA changes. By encouraging Verizon to make this filing, we are expressing no opinion concerning whether we ultimately will approve the change; we

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[6] The effects shown are for the Premium option. The effects for the Economy option would be similar.

[7] We note that Section 3(C)(1) of Chapter 288 allows USF recipients to depart from Verizon rate design provided that their local rates produce as much revenue overall as would Verizon's for equivalent calling areas.

merely indicate the idea is worth considering. We will provide persons with an interest in this issue a full opportunity to be heard.

E. How should Lost Revenue Be Recovered?

Verizon argued that the current mechanism for receiving exchanges allows an initial rate increase only if there is rate group migration and that a LEC must wait 12 months to collect the money that it claims is known and measurable in advance. Verizon estimates about $3.2 million in revenue losses for adding contiguous exchanges. Verizon makes a valid point. There are cases in which it may be able to reasonably predict costs and at least *some* of the net revenue loss at the outset or, in any event, well before 12 months have passed. We note, however, that it is very difficult for a LEC to estimate the *net* revenue losses in advance with complete accuracy.

The problem in setting the correct rate for BSCA changes is not estimating the toll loss, but estimating the offsetting revenue gains from the new BSCA rates. In any exchange that has two options (economy and premium), the revenue gain depends on the “take” rates for the two options, which in turn are influenced by the rates themselves. Nevertheless, it is certainly possible to estimate conservatively some of the revenue loss and, to the extent that the estimate is in error, the error can be fixed under the tracking account reconciliation mechanism. We therefore have changed the language in Section 5(A), which now states: “When a LEC implements new or modified BSCAs, it may propose monthly Economy and Premium option rates for review and approval by the Commission.”

We have changed the rate for Economy option customers who call the Premium option area to 5¢ per minute instead of the current 25¢ per call. We believe that the rate should approximate the lowest easily available toll rate. Verizon and TAM argue that it should be higher, nearer current toll rates. OPA argues that it should be lower. Although the rate is not for toll service, it serves as a substitute for calls that formerly were toll calls, at least for the newly added contiguous exchanges. Intrastate toll rates as low as 5 cents a minute are available. The rate is also similar to a rate for a “local measured service” call For either reason, the rate should be relatively low. In calculating the local rate increases of 25 cents and 45 cents, Verizon used an assumed 5¢ rate in its estimates of revenue gains that will offset toll revenue loss, indicating that the rate will not result in the need for substantially higher rates elsewhere. We note that the vast majority of Verizon customers opt for premium calling, although this number is somewhat biased because of the larger number of exchanges with only a single option, which, under the Rule, is called “premium.” Because there are likely to be relatively few minutes at the 5¢ rate, any change in that rate would be likely to have only a minor effect on the BSCA rate increases. See additional discussion of this issue in Part IV (Discussion of Adopted Revisions) under Section 5(C).

F. How Should Directories Accommodate the New Calling Areas?

In the FNOR, we proposed revisions that clarify the requirement to provide white page listings for a customer's entire BSCA. Verizon argues that its present system is adequate and the new rule would require an excessive number of books to be printed and distributed (and many recycled), at great expense. Verizon automatically distributes books that include each customer's home exchange. Those books in many cases do not include the entire BSCA. Verizon on request will provide additional books without charge. Verizon presently will not, however, take standing orders for these additional books; the rule as amended requires it automatically to provide books that include all of a customer's BSCA.

Verizon currently operates under a waiver from the rule requirements, which we granted with the condition that it "re-scope" its books to better include the BSCAs of the exchanges included in the books. Apparently, only minor re-scoping has occurred. We leave the language as proposed in the NOR. If Verizon or any other LEC believes itcan demonstrate that the burden of the requirement outweighs the convenience to customers, it can request another waiver. In that process, we will explore further re-scoping.

IV. DISCUSSION OF ADOPTED REVISIONS

A. Summary; Section 1

The amended requirements of the BSCA rule apply only to eligible telecommunications carriers (ETCs).[8] While there are competitive LECs (CLECs) in Maine, none of them presently are ETCs, and the vast majority of telephone customers, especially residential customers, receive telephone service from the incumbent local exchange carrier (ILEC). In all cases, the ILEC has been designated by the Commission as an ETC. Since ETCs serve as carriers of last resort, it is reasonable to require them to offer calling areas established pursuant to this rule. Excluding non-ETCs (at this time all CLECs) from these requirements is consistent with moving to competitive markets, because calling areas can be a feature on which carriers compete. If a CLEC is designated as an ETC in the future, the Rule states that it will be required to provide the same BSCAs, BSCA calling options and municipal calling as ILECs. We would, of course, consider a waiver from applicability of some or all of these requirements if an ETC CLEC presented appropriate circumstances.

B. Section 2. Definitions

2(A). "Basic-Service Calling Area." The definition states that calling within the BSCA is either flat or measured at a per-minute rate (versus the per-call rate now in

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[8] An ETC is eligible to receive interstate universal service funding (USF) pursuant to the provisions in 47 U.S.C. § 2(D). Under our Chapter 288, a rural ETC may apply for intrastate USF.

place). It states that a home exchange's BSCA includes all the exchanges that were included prior to the date of the December 2002 amendments and all contiguous exchanges. The term "plan" in the current rule has been changed to "option" throughout the revised rule to better reflect customer's ability tochoose.

2(C). "Contiguous Exchange." This definition is new. It excludes exchanges that are contiguous only across a body of water where there are no direct vehicular connections (i.e., a bridge or causeway). Examples of excluded exchanges include island exchanges, those whose boundaries are contiguous only in the middle of Sebago Lake, or in waterways between the peninsulas of the mid-coast.

2(E) "December 2002 Amendments." This date refers to the final effective date of the revisions in this rulemaking and makes clear the "dividing line" between some provisions in the current rule and certain provisions in the amended rule. This is necessary, for example, when the Rule's definition for Economy Calling Area refers to the calling area that existed immediately before the December 2002 amendments.

2(F). "Economy Calling Option." The Economy calling option remains the same as in the current version of the rule. As provided in Section 4(B)(3), for those customers that currently subscribe to the Economy option, that option will be the default after the effective date of the amendments in this rulemaking. We have added language to Section 3(A) that addresses the scope of the Economy and Premium options when a BSCA is changed.

2(G). "Eligible Telecommunications Carrier (ETC)." This new definition is necessary because we amend the Rule so that it will apply only to local exchange carriers that are "eligible telecommunications carriers" designated pursuant to provisions in the federal Telecommunications Act of 1996 (47 U.S.C. § 214(e)).

2(H). "Exchange." We deleted the last sentence of the present definition (relating to the rating of interexchange calls) because it is no longer needed in the Rule.

2(I). "Home Exchange." The addition of the third sentence makes clear the "home exchange" is the general term for the exchange from which a customer is served, and that, in those exchanges that have economy and premium options for calling to other exchanges in the BSCA, the customer may choose between those two options.

2(J). "Local Exchange Carrier." This definition makes clear that this Chapter applies only to those carriers providing local exchange service that are designated by the Commission as "eligible telecommunications carriers" (ETCs).

2(K). "Municipal Calling." The municipal calling area definition is revised to make it clearer and, in conjunction with new Section 3(C), to place the requirement that LECs to provide municipal calling in a substantive portion of the Rule. "Municipal

Calling" allows customers to call any telephone in their municipality on a toll-free basis as part of a customer's local service, whether the customer subscribes to the economy or premium option.

2(L). "Premium Calling Option." The Premium calling option is modified to state that it provides flat-rate unlimited calling to all exchanges in the BSCA. For home exchanges where both the Premium and Economy options are identical, the single option will be designated Premium. In addition, as provided in Section 4(B)(3), after the effective date of the December 2002 amendments, the Premium option will be the default for those customers that currently subscribe to the Premium option.

2(P). "Service Center." A service center is a town or city designated by the Maine State Planning Office (SPO) as a regional service center in Chapter 220 of its Rules, *Methodology For Identification of Regional Service Centers*. Service Centers are job centers and retail centers, and offer an array of social, cultural, health, and financial services.

C. Section 3(A), (B) and (C), Procedures for Determining and Implementing Basic-Service Calling Area Options.

We have eliminated (by deleting the former language in subsection A) the requirements of periodic traffic analyses and "automatic" addition of routes to Premium calling options. Although this method added a number of new exchanges to existing BSCAs in the first year of the Rule, it added only four exchanges in the second round of traffic analyses in the fifth year. It is clear that the present standard, based on traffic volumes, does not address the large number and wide variety of customer complaints about claimed calling area inadequacies. The standard has never adequately addressed exchanges that have split communities of interest. If customers' interest in calling outside their own exchange is split between two communities, the calling volumes to any one exchange are unlikely to meet the standard, even if the total calling to the two exchanges combined would exceed the standard. Calling volumes to most contiguous exchanges that are not presently included in BSCAs are quite low, but the interest (as expressed in comments in the Inquiry) in calling contiguous exchanges is high, thereby possibly indicating split communities of interest, and an aggregate high interest. Although we eliminate the mandatory periodic requirement for traffic analyses, we include a modified calling volume standard in the request process contained in Section 6.

The new (completely revised) language in subsection A addresses whether flat-rate calling to new exchanges that are added to a BSCA should be included in the Premium or Economy option. It states as a general rule that they should be added to the Premium option. As discussed above in Part III (Discussion of Comments), however, TAM expressed concerns about the high Premium rates that could result if the entire revenue loss were placed on the Premium rate. Subsection A allows a LEC to propose an exception to the general rule if it believes the resulting

Premium rate will be too high. The LEC must first demonstrate that placing a greater portion of the loss on the economy rate (allowable with Commission approval under Section 5(A)) will not suffice.

Revised subsection A also states the general rule that, if a BSCA previously had only one option (labeled Premium under Section 2(M)), that option will become the Economy option when a new exchange is added (with, of course, per-minute pricing to the new exchanges). The Premium option, with flat-rate unlimited calling, will encompass the entire expanded BSCA. Subsection A also allows a LEC to propose an exception that, upon Commission approval, would allow the continuation of only one option if there is only a "minimal difference" between the flat-rate Premium and Economy calling areas. A minimal difference can be established if the Premium option includes additional flat-rate calling only to a small number (one or two) of small (relatively few lines) exchanges.

As in the prior Rule, Subsection B states that customers may choose between the Premium and Economy options. Subsection C states that when both options would be identical, only one option will be available and it will be called Premium.

D. Municipal Calling

Municipal Calling is required by Section 3(D). Municipal Calling is the ability to call, without toll charges, all of the lines in one's home municipality, regardless of the fact that some of these calls are to exchanges that otherwise would require a toll charge, i.e., they are outside the caller's BSCA. Until we adopted the original version of this Chapter in 1994, municipal calling was recognized only in LEC tariffs. The original (and present) definitions of "Economy Calling Area" and "Municipal Calling Service" stated that it is Commission "policy" that municipal calling be provided as part of the Economy option.

It is more accurate, however, to state that all customers of LECs subject to the Rule (ETCs) must receive municipal calling as part of their local service and basic rate, regardless of which BSCA option they choose. To make this clear, we have amended the definitions and have stated the independent requirement to provide municipal calling in Section 3(D). Municipal calling is in fact provided as part of a customer's BSCA only in part, i.e., when another exchange in the BSCA includes a portion of a municipality that is the same as one included in the home exchange. However, if some portion of a customer's municipality is in an exchange that is not included in the BSCA, then that portion of municipal calling is not provided by the BSCA. Instead, it is provided by the customer's interexchange carrier (IXC). The IXC must then "de-bill" those calls, which otherwise would carry toll charges. Adding contiguous exchanges to the BSCA should alleviate much of the need for de-billing and the confusion associated with that process because many more calls that formerly were de-billed toll calls now will be BSCA calls.

Problems remain, however. For a customer to receive the benefit of de-billing, the IXC must manually make sure that the customer's account is subject to the de-billing program. This does not always happen. Another problem is that when customers choose a presubscribed IXC other than Verizon, those IXCs generally do not (or claim they cannot) provide municipal calling. The "solution," not ideal, is for customers presubscribed to other IXCs to access Verizon using an 800 number or a 1010XXX code and then place the municipal (but interexchange) call. Verizon will then de-bill the call. Fortunately, the addition of contiguous exchanges to BSCAs will reduce substantially the number of times callers who presubscribe to other IXCs must "dial around" to access Verizon.

Section 4(B)(2) requires notice about municipal calling and how to obtain it if it is not provided. This notice must be provided whenever a LEC send notices about changes in a BSCA and BSCA rates and, pursuant to Section 4(C), in the introductory pages of all LEC directories.

E. Deletions of Parts IV and V of Present Rule

We deleted Part IV of the present Rule (Optional Calling Plans for Residential Customers) and its related implementation provision in Part V(C)(2). That provision refers to the Circle Calling Plan, which was a discount interexchange (toll) plan for exchanges within 30 miles of the home exchange. In November 2000, we granted ILECs a waiver from this requirement because the rates for statewide calling under Pine Tree State Calling were more favorable than the Circle Calling rates for toll calling within 30 miles. The provision is therefore presently obsolete. We deleted the section because we believe that concerns about calling within the areas formerly covered by Circle Calling are best addressed through the modification of BSCAs rather than through optional toll calling plans.

We also deleted Part V (Basic Coin Rate for Pay Telephones) and its related implementation provision in section VI(C)(3). The 1996 TelAct deregulated and preempted state regulation of local coin payphone rates. This provision required a flat local coin rate to apply within all exchanges of the BSCA (all exchanges included in the Premium option). We included this provision in the original version of the rule because toll rates were much higher six years ago. This section was intended to provide students who could only use the pay telephone at school with a reasonable means to call home without incurring high operator fees and toll charges. There are many alternatives today, including cellular phones and pre-paid calling cards. Although we deleted the provision, we note that the BSCA for an exchange continues to define the minimum area in which local rates apply for pay phones.

F. Section 4. Customer Notice

The default calling area option for customers after the implementation of the December 2002, amendments is the customer's current option. Thus, customers enrolled in the Economy option will keep this option as their default option, and customers enrolled in the Premium option will keep this option as their default option.

Throughout sections 4 and 5 we changed the various time periods for actions by customers and LECs to whole week multiples (56 days or eight weeks rather than 60 days, and, in one instance, 35 days) because whole weeks are easier to calculate on a calendar. The Supreme Judicial Court recently adopted this concept in the Maine Rules of Appellate Procedures.

G. Section 4(D). Implementation Dates.

We have specified dates for ongoing changes or modifications to BSCAs. We have provided time periods that will be applicable generally when BSCAs are changed on a case-by-case basis. For the initial implementation of the December 2002 amendment requiring contiguous exchanges to be added to BSCAs, we recognize that longer periods may be necessary, but we did not want to burden the Rule with a special provision for this one instance. Therefore, in ordering paragraphs of this Order, we have waived the provisions of Section 4(D). Pursuant to this waiver, LECs will propose an implementation schedule when they file estimated rates for our approval.

H. Section 4(E). Telephone Directories.

We have changed the wording of this provision because the present language could be read to require LECs to distribute telephone directories only once. We make the requirement an annual one. Generally, directories are published annually. The prior provision stated that directories should be provided for the "premium calling area," which is functionally the equivalent of the full BSCA. The revision states that directories should be provided without charge for the customer's BSCA. The direct reference to the BSCA effects no substantive change. Many exchanges will see an increase in their BSCAs because we have added contiguous exchanges. In some areas the size of directories or the number provided will have to increase.

We have discussed other issues related to the provision of directories in our section above (Part III) that discusses comments.

I. Section 5. Rates for Basic Service Calling Area Options.

Section 5 is former Part VII, with significant amendments. We have changed the language of this section to allow for rate designs that do not include rate groups and to make it clear that companies can propose rates for recovering any shortfall caused by new or modified BSCAs for Commission review and approval. We have deleted the separate sections that distinguish between initiating and receiving exchanges. Instead, LECs will be able to propose rates they believe will recover the revenue losses associated with BSCA modifications.

As discussed above in Part III (Discussion of Comments), we also have removed the limit that permitted a change in rates during the first 12 months of a BSCA change only to take account of rate group migration. In addition to the fact that such an approach requires the LEC to absorb the revenue losses and costs that are not recovered from rate group migration for an entire year, the limited (but unrealistic) price change may mislead customers into choosing the wrong option.

Section 5(A) as modified states that the objective for rates for any new or modified option is to recover the costs and revenue shortfall associated with the provision of additions to a BSCA. It allows a LEC to propose rates based on estimates of revenue losses and revenue gains from the revised rates. The latter estimates are far less certain because they depend on assumptions about "take rates," i.e., the number of persons who subscribe to each option and, for those customers who subscribe to the Economy option, the revenue (at 5 cents a minute) from calling to exchanges that are flat-rated only in the Premium option. In developing these estimates, we expect companies to use estimates about "takes" that are as realistic as possible. However, if error is made (and error is almost inevitable), it should be on the side of slightly lower rates, especially for the Premium option. Whether rates are slightly too high or too low should not make much difference to the companies because of the tracking account and reconciliation mechanism. Nevertheless, if the Premium rates are too high, they may deter customers from taking the option and actually reduce total revenues, leading to a need to increase rates. We believe it is preferable to set an initial rate that will not deter subscription and then, if necessary, increase it modestly.

Subsection A also describes rate design alternatives. A LEC may propose that the exchange that has additional exchanges added to its BSCA should bear the costs and net revenue losses associated with the change. A LEC may also propose to spread some of these costs to customers in other exchanges for either of two reasons: first, that the resulting rates in the exchange whose BSCA is being increased would be much higher than other exchanges in the company that had equivalent BSCAs; second, the change is part of a systematic company-wide (or state-wide, e.g., pursuant to a Rule change) change in all (or most) BSCAs. The present change in the Rule that requires the addition of all contiguous exchanges that are not already included would appear to be such a systematic change. Verizon's calculation indicating that its costs and revenue losses could be funded with 45 and 25 cent increases, respectively, assumes that those rate increases would apply in all of its exchanges. Some of its exchanges (those whose BSCAs already include all contiguous exchanges) will see no change under the Rule. Others will add a small or large number of exchanges. However, the effect of adding contiguous exchanges is to make BSCAs generally more equivalent throughout the State. It may well be reasonable to require customers in exchanges with existing large BSCAs to pay some of the costs associated with adding exchanges to those home exchanges that, until now, have had limited BSCAs.

The second principle stated in Section 5(A) is that most of the rate increase for revenue recovery and costs generally should be applied to the Premium option rate. Some increase to the Economy option rate is acceptable even though there is no change in the flat-rated portion of the Economy option, because Economy customers benefit by being able to call the new areas in the BSCA for 5 cents a minute rather than incurring a toll charge. Toll rates are often, although not always, higher. The provision also allows a LEC to propose placing a greater portion of the revenue loss on the Economy rate if the Premium rate would be so high that it may discourage customers from taking that option, possibly leading to an even greater net revenue loss.

Subsection B states that calls beyond the flat-rate areas of the Economy option, but within the BSCA (i.e., the area defined by the flat-rate area of the Premium option) are charged a measured rate of 5¢ per *minute*. Under the earlier Rule, these calls were priced at 25¢ per *call*. We have changed to a per-minute rate for two reasons. First, for very short duration calls, 25¢ is over-priced in comparison to presently available retail toll rates. Second, for much longer calls, 25¢ is significantly under-priced.

As a general principle, we believe that the per-minute rate should approximate the best available retail toll rates, because, absent the full size of the BSCA (which is equal to the flat-rate area of the premium option and which, under the rule, will expand to include all contiguous exchanges), customers who choose the economy option would be able to make retail toll calls to the areas within the BSCA beyond their own flat-rate areas. We have selected five cents per minute as the rate for these per-minute intra-BSCA calls. Similar rates are available under many calling plans offered by competitive IXCs, and it is difficult to justify a higher rate for these calls than rates generally available for retail toll calls beyond the BSCA. Because pricing in the retail toll market may change, the Commission will review this rate annually in light of future competitive conditions. *See* additional discussion of this issue in Part III (Discussion of Comments).

The tracking account mechanism is retained in subsection C, essentially unchanged. This mechanism compensates for the difficulty of predicting net revenue losses, particularly the offsetting revenue component. It establishes a tracking mechanism for costs and revenue shortfalls associated with changes in BSCAs. To the extent the rates approved for effect when the change is implemented fail to recover (or over-recover) costs and revenue shortfalls, the tracking account provides for recovery and a basis for setting ongoing rates. If there is over-recovery, the LEC must propose a rate adjustment. The Rule permits, but does not require, the Commission to allow a LEC to recover shortfalls. As noted above, the time period for filing the tracking report after the expiration of the one-year tracking period has been changed from 60 to 56 days.

J. <u>Section 6: Request for Changes to BSCA and Calling Options</u>

Section 6, formerly Section VIII, is now designated "Requests for Changes to BSCAs and Calling Options" to indicate better what customers and LECs will actually be requesting. The individual sub-sections, with modifications, remain as in the current version of the rule, Section VIII. Instead of requesting "waivers" of the rule, customers and LECs are actually asking the Commission to modify the BSCA or available options for a particular home exchange. Because the Rule no longer contains periodic automatic calling volume analysis that can result in automatic increases to the size of a BSCA, the need for a "waiver" of those thresholds is not necessary. LECs may request that the Commission modify the BSCA or available calling options for an exchange, but must propose a reasonable alternative to the options required by the Rule that is consistent with the purposes of the Rule. LECs and customers may use Section 6 to request that an expansion of a BSCA (i.e. adding contiguous exchanges) not be implemented for specific exchanges if the Company demonstrates that the rate impact would be onerous.

Customers continue to have two methods for requesting a modification to their BSCA. Under the present Rule, the customer threshold for requesting a waiver in exchanges other than in "single-exchange" BSCAs is 30% or 1,000 customers. We changed the threshold for those other exchanges to 50 or more customers, the same threshold that applies in single-exchange BSCAs, as established in the recent change to this Chapter that implemented 35-A M.R.S.A. §7303-A. We also believe that the threshold for customers to bring requests to the Commission does not need to indicate a "community of interest" since we now have clear standards for analyzing the request. We made a number of text changes to reflect the change from "waiver" to "request."

The section describing standards has been moved to its own sub-section (§ 6(C)). That subsection applies to all requests for modification, including those by LECs. Currently the standards apply only to requests by customers.

The Commission, as part of its analysis of a Request under this section, may require a LEC to conduct a study of residential calling volumes to any exchange that customers have requested be included in a BSCA option. The study will be similar to the automatic studies previously required by the Rule, but there is one important modification to the standard itself. We stated in the Notice of Inquiry that the current method of measuring calling volumes was not providing an accurate picture of an exchange's community of interest." The evidence for this is that in the second 5-year cycle of the rule only four additional BSCA routes were identified. In the Procedural Order issued May 2, 2001, we specifically asked about the calling volume method and thresholds. The OPA stated that the thresholds should be much lower than the current standard. In comments filed on June 1, 2001, Verizon suggested a 2-step alternative method it said was more flexible, somewhat more inclusive and demonstrated a measurable community of interest. Verizon provided an example that identified 54 routes passing the initial step with eight of those passing the second step. We believe that Verizon's method represents an improvement because it avoids an exclusive focus on only higher volume callers (50 percent of customers making four or more calls a month). Instead, it takes into account both average calling volumes and higher volume callers.

We will use the calling volume test suggested by Verizon. The test is in two parts: the LEC will first identify initiating (home) exchanges in which customers make at least three calls per month, on average, to a specified receiving exchange; to further qualify, at least 40 percent of the initiating exchange's residential customers must make at least two calls per month to that receiving exchange. If the thresholds are reached, the Commission will grant the request for the change in the BSCA or calling option, unless it finds good cause to deny the request.

K. Section 7. Waivers

Finally, we add a new waiver section that states," The Commission, on its own motion or on the request of any person, may waive any provision of this rule that is not addressed by the provisions of Section 6." This is consistent with the waiver provisions contained in other Commission rules.

IV. RULEMAKING PROCEDURES

Pursuant to 35-A M.R.S.A. § 1311-A (10), this rule is considered a "routine technical rule" as defined in Title 5, chapter 375, subchapter II-A.

V. FISCAL IMPACT

5 M.R.S.A. § 8057-A(1) requires the Commission to estimate the fiscal impact of this Chapter. "Fiscal impact" is defined in 35-A M.R.S.A. § 8063 as "the estimated cost to municipalities and counties for implementing or complying with the proposed rule." In the NOR, we stated that we believe that the proposed amendments have no fiscal impact. No person commented on the fiscal impact, and we find there is none.

VI. ORDERING PARAGRAPHS

Accordingly, we order

1. That the amendments to Chapter 204, Basic Service Calling Areas, that is attached, is adopted;

2. That the Administrative Director send a copy of this Order and the attached rule to:

    a. Incumbent local exchange carriers in the State of Maine;

    b. The Office of Public Advocate;

    c. The Secretary of State for publication in accordance with 5 M.R.S.A. § 8053(5);

d. Executive Director of the Legislative Council, State House Station 115, Augusta, Maine 04333 (20 copies).

3. That the Administrative Director send notice of this Order to:

a. Competitive local exchange carriers in the State of Maine;

b. Competitive interexchange carriers in the State of Maine;

c. All persons included in the service lists for proceedings conducted under this Rule during the past 5 years;

d. All people who have filed with the Commission within the past year a written request for any Notice of Rulemaking.

3. That the implementation deadline of Section 4(D) is hereby waived for the addition of all contiguous exchanges to all basic service calling areas required by the amendments to this Chapter adopted in this rulemaking. Local exchange carriers subject to this Rule shall instead file a proposed schedule for implementation and proposed rates (with work papers) on or before February 14, 2003. For the purpose of revenue loss calculations, LECs shall use the most recently available 12-month period for billing units and the access rates that will be in effect on and after May 30, 2003. All LECs shall attempt to coordinate implementation dates.

Dated at Augusta, Maine, this 10th day of December, 2002.

BY ORDER OF THE COMMISSION

____

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21 days** of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.